

HOUSE BILL 3635

By Williams R

AN ACT to amend Tennessee Code Annotated, Title 5;
Title 6; Title 7; Title 8; Title 9; Title 12; Title 49 and
Title 67, relative to contracts for public projects.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 12, Chapter 4, is amended by adding the following as a new, appropriately designated part:

12-4-1001.

As used in this part, unless the context otherwise requires:

(1) "Build-to-suit capital lease" means a capital lease that provides for the construction of new facilities or the renovation of existing facilities by a private developer, the cost of which is estimated to be greater than three hundred thousand dollars (\$300,000);

(2) "Capital lease" means a lease that, in accordance with generally accepted accounting principles, and regardless of how the parties describe the agreement, transfers substantially all the benefits and risks of ownership to the lessee;

(3) "Contracting party" means the city, county or metropolitan form of government, or the public subsidiary approved by the local governing body, entering into a contract with a private developer for a capital lease or built-to-suit capital lease.

(4) "Deficiency judgment" means a judgment or decree for any deficiency due on a secured indebtedness;

(5) "Prime contractor" means a contractor who contracts directly with the private developer or the private developer's construction manager-at-risk, if any,

for construction, repair, or renovation work under this part and shall include minority contractors as defined and, at least to the extent included, within the city, county or metropolitan form of government's minority participation goal; and

(6) "Private developer" means the entity with which the contracting party, enters into a capital lease or build-to-suit capital lease for the construction, repair, or renovation of property under this part.

12-4-1002.

(a) Cities, counties, metropolitan forms of government, and any public subsidiary approved by the local legislative body, may enter into capital leases of real or personal property for use as or in public buildings. The capital lease may relate to an existing building or a new building to be constructed. The term of any capital lease, including any renewal periods, shall not exceed forty (40) years from the expected date that the contracting party shall take occupancy if that action is to occur pursuant to the lease of the property that is the subject of a capital lease.

(b) A capital lease entered into under this part may provide that the private developer is responsible for providing, or contracting for, construction, repair, or renovation work. Construction, repair, or renovation work undertaken or contracted by a private developer is not subject to the requirements of § 49-2-203(a)(3) regarding construction of school buildings and purchase of supplies, furniture, fixtures and materials; except, that if the work undertaken or contracted for involves the estimated expenditure of three hundred thousand dollars (\$300,000) or more, the work shall be subject to § 49-2-203(a)(3).

(c) A capital lease shall not contain a nonsubstitution clause that restricts the right of a contracting party to continue to provide a service or activity or to replace or provide a substitute for any property financed or purchased pursuant to the capital lease.

12-4-1003.

No deficiency judgment may be rendered against any contracting party or local legislative body in any action for breach of a contractual obligation authorized by this part, and the taxing power of a local government shall not and may not be pledged directly or indirectly to secure any monies due under a contract authorized by this part. A capital lease shall state that it does not constitute a pledge of the taxing power or full faith and credit of a local government.

12-4-1004.

A capital lease entered into under this part shall be considered a continuing contract for capital outlay, and may be entered into for a period of years; provided, that, the local legislative body has appropriated funds to the contracting party sufficient to service the first year of debt and the local legislative body has by binding resolution agreed to appropriate sufficient funds in ensuing fiscal years to meet the amounts to be paid under the contract in those years.

SECTION 2. This act shall take effect July 1, 2012, the public welfare requiring it.